Center for Immigration Studies

Backgrounder

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Here to Stay

There's Nothing as Permanent as a Temporary Refugee

By Mark Krikorian

Temporary protection for foreigners in distress has figured prominently in discussions of immigration policy for some time. Hondurans, Kosovar Albanians, and Colombians are only the most recent groups considered for some kind of limited safe haven. Temporary protection amounts to a limited grant of refugee status, offering foreigners who would not otherwise be allowed to remain in the United States limited sanctuary until an emergency (civil war, widespread violence, or natural disaster) in their home country passes. For the most part, temporary protection has been offered to aliens already in the United States, usually illegally, who do not qualify for asylum but whom we are unwilling to deport.

As attractive as temporary protection seems on the surface, there is an enormous, and unbridgeable, gap between the theory and the reality. Forty years of experience have shown that "temporary" protection almost always results in permanent settlement. Whatever the theoretical benefits of temporary protection, it is clear that in the real world there is nothing as permanent as a temporary refugee.

Kosovar Albanians

The changing policy toward settlement of the Kosovar Albanians neatly illustrates this gap between theory and reality. Though most of the Kosovo Albanians were brought legally from overseas, rather than already here illegally, the principle of temporary protection was still the initial model applied to their situation.

During the Sunday morning talk shows on April 4, it was revealed that the United States would provide temporary sanctuary to 20,000 Kosovar Albanians at our naval base at Guantanamo Bay in Cuba, as part of a broader effort by Western countries to move Kosovar Albanians fleeing Serbian attacks out of an untenable situation in Macedonia. Because Guantanamo is on foreign soil, the Kosovar Albanians would not be able to claim asylum or enter the United States.

The temporary nature of this initiative was emphasized by Clinton Administration spokesmen: J. Brian Atwood, head of the U.S. Agency for International Development, explained the choice of Guantanamo by saying, "We wanted to make sure we're sending a message that this is a temporary solution to the problem." He said the refugees would be allowed to stay at Guantanamo for up to 18 months, but that the administration did not expect them to remain more than six months. White House spokesman Joe Lockhart said, "This operation will be temporary, as we fully intend the Kosovars will ultimately return to their homes and the operation will only transport people voluntarily."

Within days, hints began to emerge from the White House that the Kosovars might not be sent to Guantanamo after all, prompted by complaints from refugee-service groups that the refugees would be isolated on the remote naval base. Then, in an April 21 speech at Ellis Island, Vice President Gore announced that the Kosovar Albanians would be resettled as refugees in the U.S.: "We will accept, on the American mainland, up to 20,000 of the hurting and homeless Kosovar refugees – those with close family ties in America and those who are vulnerable. ... We will bring them here until they are able to return home safely." But Gore continued to insist that the refugees' stay would be temporary: "We anticipate their return to Kosovo. . . . the ones coming to the United States, will also be prepared to return on short notice."

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By the next day, however, administration officials conceded the obvious – that many of the Kosovar Albanians would obtain permanent residence in the United States, a benefit available after one year to anyone admitted as a refugee. In the words of a senior administration official, "We are going to try to create conditions in Kosovo for these people to return, but the choice will ultimately be theirs." Rep. Eliot L. Engel (D-N.Y.), chairman of the House Albanian Issues Caucus, put it more plainly: "And let's face it, after a year or two, they'd have had a taste of political freedom. They won't want to go back. . . The reality is that the vast majority are probably here to stay."

First planeload of 453 Kosovar Albanians arrived at Fort Dix, N.J., on May 5; the first baby was born on American soil hours later. The war ended before the 20,000 quota was filled, and a total of about 10,000 people were eventually resettled in the United States. By the end of summer, only about 10 percent will have returned to Kosovo.

This shift from temporary to permanent relocation for the Kosovar Albanians was remarkable mainly for the speed with which it happened. Otherwise, it is simply another instance of temporary status leading to permanent settlement. And how could it be otherwise? After a long period of residence, any alien, however "temporary" his nominal status, will put down permanent roots in the community that make it increasingly difficult to deport him – he may marry, have children, start a business, buy a home, and at some point it becomes politically, and perhaps even morally, untenable to ask him to leave.

Origins

Legislation to create a formal process for temporary protection was debated and voted on in Congress at various points in the late 1980s, but was not enacted into law until "Temporary Protected Status" (TPS) was created by the Immigration Act of 1990. Prior to the creation of this status, there was no statutory basis for permitting illegal aliens, or nonimmigrants whose visas were expiring, to remain in the United States without requesting asylum. But as early as 1960, the executive branch created "Extended Voluntary Departure" (EVD) as a temporary grant of blanket relief from deportation for nationals of certain countries who feared returning to their homelands. EVD was justified as an exercise of prosecutorial discretion by the Attorney General in deciding not to force the departure of certain aliens. (See Table 1 below for grants of EVD.)

The transition to permanent residence of "temporary" refugees was present from the start. In the 1960s, the thousands of Cubans fleeing Castro's regime were allowed to stay under EVD until Congress passed the Cuban Adjustment Act in 1966, which granted them, and thousands to follow, the right to remain permanently. In the 1970s, thousands fled the communist takeover of Indochina, and they too were granted EVD until Congress in 1977 made their status permanent. And in 1987, more than 5,000 people from Afghanistan, Ethiopia, Poland, and Uganda who had EVD were granted amnesty by Congress in legislation championed by Sen. Jesse Helms (R-N.C.).

In April 1990, President Bush issued Executive Order 12711 giving an estimated 80,000 nationals of the People's Republic of China temporary protection from deportation, as a result of the 1989 government crackdown on democracy activists there. Afraid that a grant of EVD to those fleeing a left-wing regime could be used as a precedent to demand EVD for those fleeing the friendly right-wing regime in El Salvador, the administration made up a new status, "Deferred Enforced Departure,"

Table 1. Nationals From the Following Countries Received EVD During the Years Listed:

Cuba	1960-1966
Dominican Republic	1966-1978
Czechoslovakia	1968-1977
Chile	1971-1977
Cambodia	1975-1977
Vietnam	1975-1977
Laos	1975-1977
Lebanon	1976
Ethiopia	1977-1982
Hungary	1977-1981
Romania	1977-1981
Uganda	1978-1986
Iran	1979
Nicaragua	1979-1980
Afghanistan	1980-1985
Poland	1982-1989

Source: Federal Register, INS

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which was an administrative stay of deportation ordered by the president. DED was, for all intents and purposes, identical to EVD. The final result was the same as well – in 1992, Congress passed the Chinese Student Protection Act, which made this temporary status permanent by allowing Chinese who entered before the issuance of the executive order to apply for a green card. Though students were supposed to be the beneficiaries of this legislation, a large number – perhaps the majority – of those receiving green cards were actually illegal aliens from the province of Fujian, smuggled into the United States by "snakehead" gangs.

In 1998, Rep. Patrick Kennedy of Rhode Island introduced a bill to grant TPS Liberians permanent residency, saying that, "after seven years of providing them this special protected status we can't pull the rug out from under them."

TPS Defined in Statute

Finally, in 1990, Congress passed the Immigration Act which, among other things, empowers the Attorney General to grant Temporary Protected Status to people whose countries are suffering war or natural disaster. The relevant section of the Immigration and Nationality Act reads:

> *The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if -*
>
> *(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;*
>
> *(B) the Attorney General finds that -*
>
> *(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,*
>
> *(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and*
>
> *(iii) the foreign state officially has requested designation under this subparagraph; or*
>
> *(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.*

(Interestingly, this last provision puts the Attorney General in the perverse position of determining that it is in the national interest to allow illegal aliens to reside in the United States.)

The chief impetus behind the creation of TPS was the government's unwillingness to deport thousands of illegal aliens from El Salvador, which was engulfed in civil war during much of the 1980s. In fact, section 303 of the Act specifically designated Salvadorans for TPS. Almost 200,000 illegals were thus able to avoid deportation for a period of 18 months. However, when the Salvadorans' TPS expired in 1992, the administration still chose not to deport them and simply reverted to the old practice of granting ad hoc status, this time re-using the label Deferred Enforced Departure.

Though DED for Salvadorans ended in 1996, there is little prospect of their deportation. The 1990 settlement of a class-action lawsuit allows Salvadorans protected under TPS and DED to re-apply for asylum on the grounds that their previous asylum applications had allegedly not been given proper consideration for political reasons. In addition, the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA) allows Salvadorans to apply for cancellation of removal (this is a form of individual amnesty for long-term illegal aliens whose deportation would cause "extreme hardship") under the more-lenient, pre-1996 rules; the Clinton Administration said earlier this year that it is considering a blanket finding of "extreme hardship" for Salvadorans applying for green cards under this provision, resulting in what amounts to an unlegislated mass amnesty.

The near certainty that temporarily protected Salvadorans will end up staying permanently underlines the fallacy of such humanitarian deferrals of deportation. Nor has the creation of the formal process of TPS made any difference in this regard. Liberians were the first group to receive TPS, in 1991; by 1998, there was a significant effort in Congress to grant TPS Liberians permanent residency. Rep. Patrick Kennedy of Rhode Island introduced a bill to that effect, saying that "after seven years of providing them this special protected sta-

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tus we can't pull the rug out from under them." The Liberian case also demonstrates how TPS is almost routinely extended – Liberians first received TPS in 1991, and it has been periodically extended. A "final" extension of TPS granted through September 1998 was followed by yet another one-year extension.

Concerns about temporarily protected aliens settling permanently may be of less concern when relatively small numbers of people are involved, as has been the case with many grants of TPS (see Table 2). But such concerns are salient when large numbers are granted TPS; this is certainly the case with the December 1998 grant of TPS for 18 months to an estimated 90,000 Hondurans and 60,000 Nicaraguans, in response to the devastation wreaked on those countries by Hurricane Mitch. (Advocacy groups were unsuccessful in getting TPS extended to about 500,000 Salvadorans and Guatemalans, though deportations of these groups were suspended for several months.)

The fallout from Hurricane Mitch in Central America is precisely the kind of natural disaster TPS was intended to address, and if the 90,000 Hondurans were to leave after the expiration of their TPS status, then the legislation would have served its purpose (the Nicaraguans won't be leaving because they are already eligible for amnesty under NACARA). But history gives us little reason to expect this will happen; their TPS status is likely to be extended, perhaps replaced by DED, until such time as the aliens in question have either become permanent residents through some other means or until Congress passes legislation legalizing their status. Few, if any, will ever depart voluntarily or be removed.

Prospect of TPS Attracts Illegals

Temporary protection, whether institutionalized or ad hoc, is not merely a tool of foreign policy or a stratagem to avoid deporting politically popular illegal aliens. In recent months it has become clear that the prospect of receiving TPS is also a *magnet* for new illegal immigration. Since the beginning of this year, thousands of people from Colombia are believed to have arrived illegally or overstayed tourist visas because of that country's deteriorating economy and escalating violence. The Colombian government estimates that 65,000 people left the country in the first four months of this year, many going to the United States, and that up to 300,000 more could leave by the end of the year. A Colombian ethnic organization in Miami estimates that 15,000 families have fled to South Florida in the past few months, many arriving as tourists but overstaying their visas.

The lobbying effort to procure TPS for these illegal aliens is gaining momentum. In July, thousands of people demonstrated in Miami, Chicago, Houston, and elsewhere, demanding TPS. Rep. Lincoln Diaz-Balart, a Republican congressman from Miami with many Colombian constituents, has written President Clinton demanding looser requirements for granting political asylum to Colombians. And the U.S. Committee for Refugees has starting a letter-writing effort to have Colombian illegal aliens granted TPS.

Table 2. Grants of TPS
(with estimates of number of people covered at time of grant)

Bosnia-Herzogovina	400
Burundi	400
El Salvador	190,000
Guinea-Bissau	300
Honduras	90,000
Kosovo	5,000
Kuwait	10,000
Lebanon	27,000
Liberia	8,000
Montserrat	300
Nicaragua	60,000
Rwanda	200
Sierra Leone	4,000
Somalia	2,000
Sudan	4,000

Source: Federal Register, INS

Guantanamo

The exception that proves the rule of permanent settlement of temporary refugees is the Haitian boat people given safe haven at the U.S. naval base in Cuba's Guantanamo Bay. During the 1994-95 rafter crisis, there were as many as 20,000 Haitians and 30,000 Cubans at Guantanamo, where the administration said they would remain, rather than be allowed to enter the United States. With regard to the Cuban rafters, the administration said unequivocally in the summer of 1994 that no one given safe haven at Guantanamo would ever be al-

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lowed into the United States. Reno addressed those in Cuba contemplating flight: "You will not be processed – not be processed – for admission to the United States." White House spokeswoman Dee Dee Myers was emphatic in an exchange with a reporter: [Myers:] "There is no plan to take or house any refugees here in the United States. Period." [Reporter:] "So you're saying in the future that will never happen?" [Myers] "That's correct." Later in the same press conference, Myers reiterated: "Anyone who is picked up at sea will be given safe haven, access to safe haven. ... But they will absolutely in no way have any way of coming to the United States."

Naturally, that changed after a few months, and by May 1995, the administration announced that all the Cubans, except for criminals, would be admitted, in yet another example of temporary protection evolving into permanent settlement.

But the Haitians did not receive the same treatment. The assertions that safe haven would not result in permanent residence were similar: toward the end of the return of the Haitians, a State Department release said "under no circumstances will any Haitian currently at Guantanamo be admitted to the United States." But, unlike the case of the Cubans, the administration did not back down. After the ouster of the Haitian military regime in September 1994 by U.S. forces, almost all the Haitian boat people were returned. The exception is instructive: it would appear that temporary safe haven can work only when offered outside the territory of the United States, to a group with little domestic constituency, fleeing from a country the United States will soon invade and occupy. Needless to say, this set of conditions will be very rare.

The rhetoric of temporary protection may have a certain political appeal, and the formal articulation of a TPS mechanism is at least tidier than the extra-legal methods employed before 1990. But it is clear that the concept of temporary protection has not been, and cannot be, successful – i.e., truly temporary. It is simply a lie if used as a fig leaf to cover political unwillingness to enforce the law or as a back door to permanent immigration. Therefore, if Congress or the Administration consider it advisable to admit refugees or give amnesty to illegal aliens, simple honesty demands that these actions be called by their real names.

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